SUPREME COURT OF THE UNITED STATES.

No. ~~481.~~ 245

THE UNITED STATES, PLAINTIFFS,

vs.

JAMES D. PORTER.

ON A CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TENNESSEE.

FILED JANUARY 4, 1871.

Dec. 1871

1 UNITED STATES OF AMERICA:

Be it remembered that the circuit court of the United States for the district of West Tennessee was begun and held at the federal court-rooms in the city of Memphis, on the fourth Monday in, it being the 28th day of, November, A. D. 1870, being the time and place designated by law for the holding said court.

Present and presiding, the Hon. H. H. Emmons, judge of the United States circuit court for sixth circuit thereof; and the Hon. Connally F. Trigg, United States district judge for the districts of Tennessee; present, also, A. S. Mitchell, clerk.

And on Wednesday, the 28th day of December, A. D. 1870, the same being one of the days of said term, the following proceedings were had and entered of record in said court, to wit:

THE UNITED STATES
vs.
JAMES D. PORTER. } No. 658.—Indictment.

State of the case.

2 This is an indictment against the defendant, James D. Porter, for holding office in violation of section fifteen of the act of Congress approved May 31st, 1870, entitled "An act to enforce the right of citizens of the United States to vote in the several States of the Union, and for other purposes," which indictment charges substantially as follows:

That J. D. Porter, late of said circuit and district, on the 1st day of January, 1860, as a legislative officer of the State of Tennessee, to wit, as a member of the house of representatives of said State, took an oath to support the Constitution of the United States; and that afterwards, on the 1st day of January, 1862, being a citizen of the United States, and within the limits of the United States, gave aid and comfort to persons then in rebellion and insurrection against the United States, and being enemies thereof; that he gave aid and comfort to the enemies thereof by furnishing them with arms, provisions, &c.; that afterwards, to wit, on the 20th day of September, 1870, he, the said Porter, did unlawfully and knowingly, hold and exercise the office of judge of
3 the circuit court for the county of Henry, and State of Tennessee, contrary to the statute of the United States, and against the peace and dignity of the same.

The second count charges substantially the same facts, and that said Porter did join a great number of traitors and rebels, and with them waged and & levied war and rebellion against the United States.

To which said indictment the defendant demurs, and the plaintiff joins in demurrer.

This cause coming on to be argued at this term, there occurred as questions—

First. Whether sec. 15 of the said act of Congress of May 31st, 1870, is appropriate and constitutional legislation for the enforcement of sec. 3 of article fourteen of the amendments to the Constitution.

Second. Whether the said third section of said fourteenth article of amendment, and said fifteenth section of said act of Congress of

May 31st, 1870, are to be so construed as to embrace acts of rebellion or insurrection committed prior to the adoption of said fourteenth article of amendment.

On which said questions the opinions of the judges were opposed.

4 Whereupon, on motion of H. E. Hudson, U. S. att'y, who prosecutes on behalf of the United States, that the points on which the disagreement hath happened may, during the term, be stated under the direction of the judges, and certified under the seal of the court to the Supreme Court to be finally decided, it is ordered that the foregoing statement of the case, which is made under the direction of the judges, be certified according to the request of the said attorney for the United States and the law in such cases made and provided.

UNITED STATES OF AMERICA,
District of West Tennessee:

I, Abram S. Mitchell, clerk of the United States circuit court for the district of West Tennessee, do hereby certify that the foregoing four pages contain a full and true copy of the proceedings of said court on the division of opinion of the judges thereof in the cause therein stated.

Witness my hand and the seal of said circuit court this 28th day of December, A. D. 1870, and of the independence of the United States the 95th year.

[SEAL.] A. S. MITCHELL, *Clerk.*

(Indorsement on cover:) No. 461. The United States, plaintiffs, vs. James D. Porter. Certificate of division. W. Tennessee C. C. U. S. Filed 4th January, 1871.